

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

United States of America,

Case No.: 2:21-cr-00068-JAD-BNW

Plaintiff

V.

Alcides Aballe-Gonzalez,

Defendant

Order Denying Motion to Reduce Sentence under Amendment 821

[ECF No. 33]

Defendant Alcides Aballe-Gonzalez is roughly 17 months into serving his 42-month sentence for possession with intent to distribute methamphetamine. He moves for a sentence reduction based on recent changes to the sentencing guidelines known commonly as Amendment 701. His counsel at the Federal Public Defender's office, appointed under General Order 2023-01, filed a notice of non-eligibility, disagreeing with Aballe-Gonzalez's pro se calculations. At issue is whether Aballe-Gonzalez does not qualify for an adjustment to his criminal-history points or his offense level, I deny his motion.

Discussion

The Sentencing Commission submitted criminal-history amendments to Congress in May 2023, they took effect in November 2023, and courts may apply them retroactively beginning in February 2024.¹ Aballe-Gonzales seeks relief under two of those amendments: the one that reduces the impact of the extra “status points” imposed for reoffending while still under a

¹ Sent'g Guidelines for U.S. Courts, 88 Fed. Reg. 60534, 60534 (Sept. 1, 2023).

1 criminal-justice sentence, and another that provides relief to zero-criminal-history-point
 2 offenders.²

3 The first change, added to the guidelines as § 4A1.1, reduces the impact of “status points”
 4 on a sentence. Status points are additional criminal-history points applied to a defendant who
 5 committed his crime of conviction while under another criminal-justice sentence. Because the
 6 Commission found that status points are less reliable indicators of rearrest, these changes allow
 7 courts to depend less on status points to determine criminal history.³ A defendant with seven or
 8 more criminal-history points may receive a one-point reduction in his status points, while a
 9 defendant with six or fewer criminal-history points may have his status points eliminated for
 10 committing his offenses while under a criminal-justice sentence.⁴

11 The second provision was added to the guidelines as § 4C1.1 and lowers the offense level
 12 of zero-point offenders whose crime did not involve specific aggravating factors.⁵ Zero-point
 13 offenders are defendants with no criminal-history points. The Commission found that these
 14 offenders have lower recidivism rates than other offenders, including those with one criminal-
 15 history point, that warrant a reduction in offense level.⁶ A defendant with zero criminal-history

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 19² ECF No. 33.

20³ *Id.* at 60535–36; *see also* U.S. Sent’g Comm’n, *Revisiting Status Points* (2022),
https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220628_Status.pdf.

21⁴ Sent’g Guidelines for U.S. Courts, 88 Fed. Reg. 60534, 60535 (Sept. 1, 2023).

22⁵ U.S. Sent’g Comm’n Guidelines Manual § 4C1.1 (U.S. Sent’g Comm’n 2023).

23⁶ U.S. Sent’g Comm’n, *Amend. to the Sent’g Guidelines* (2023),
https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202305_Amendments.pdf.

1 points whose offense did not involve threats of violence or sexual acts may now receive a two-
2 level decrease in his offense level.⁷

3 Aballe-Gonzalez contends that he is eligible for a sentence reduction based on these
4 amendments.⁸ But as his counsel acknowledges, Aballe-Gonzalez doesn't qualify for either
5 reduction.⁹ Aballe-Gonzalez did not receive any status points at the time of sentencing because
6 he was not under a criminal-justice sentence when he committed this offense.¹⁰ So there are no
7 status points to remove under § 4A1.1. And with one criminal-history point for a May 2020
8 prior conviction, he wasn't a true zero-point offender entitled to a reduction under § 4C1.1.¹¹

9 **Conclusion**

10 IT IS THEREFORE ORDERED that Alcides Aballe-Gonzalez's motion for a sentence
11 reduction under Amendment 821 [ECF No. 33] is **DENIED** with prejudice.

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13 U.S. District Judge Jennifer A. Dorsey
14 March 12, 2024
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⁷ *Id.*

⁸ ECF No. 33.

⁹ ECF No. 36.

¹⁰ Presentence Investigation Report at 7.

¹¹ *Id.* at 8.